

Sac's Construction Company, Inc. d/b/a Sac's Construction Co., Inc. and Massachusetts Laborers' Benefit Funds. Case 1-CA-28264

November 23, 1993

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On January 10, 1992, the National Labor Relations Board issued a Decision and Order¹ in this proceeding in which it ordered the Respondent to make whole the employees in the appropriate bargaining unit by making all contractual fringe benefit fund payments that the Respondent has unlawfully failed to make pursuant to the terms of a collective-bargaining agreement with Massachusetts Laborers District Council and a repayment agreement with Massachusetts Laborers' Benefits Funds. On September 17, 1992, the United States Court of Appeals for the First Circuit, in an unpublished decision, enforced the Board's Order.

A controversy having arisen over the amount of contractual benefit fund contributions due and the amount of money due employees under the terms of the Board's Order, the Regional Director for Region 1 issued a compliance specification and notice of hearing on January 28, 1993, alleging the amount of money due. On February 18, 1993, the Respondent filed an answer. It claimed that it was without sufficient information either to admit or to deny the allegations contained in each paragraph of the compliance specification, but it generally denied the allegations to the extent that an answer was required.

By certified mail dated March 2, 1993, the Region informed the Respondent that its answer was insufficient because its denials of the allegations of the compliance specification did not meet the requirements of Section 102.56 of the Board's Rules and Regulations. The Respondent was also advised that, if no amended answer was received by the close of business on March 23, 1993, a Motion for Summary Judgment would be filed. The Respondent failed to claim this letter, which was returned to the Regional Office. On March 31, 1993, the Region informed the Respondent by regular mail that its answer was insufficient and that, if an amended answer was not received by close of business on April 21, 1993, a Motion for Summary Judgment would be filed. The letter was not returned to the Regional Office.²

¹ 305 NLRB No. 171 (not published in bound volume).

² The Respondent's failure or refusal to claim certified mail cannot serve to defeat the purposes of the Act. Furthermore, the failure of the Postal Service to return documents sent by regular mail indicates actual receipt of the those documents by the Respondent. *Julco Fireproofing Co.*, 309 NLRB No. 86 (Nov. 25, 1992) (not published in bound volume).

Ruling on the Motion for Summary Judgment

Section 102.56(b) and (c) of the National Labor Relations Board's Rules and Regulations states:

(b) *Contents of answer to specification.*—The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

(c) *Effect of failure to answer or to plead specifically and in detail to backpay allegations of specification.*—If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate. If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

The Respondent's answer to the compliance specification fails to meet the requirements of Section 102.56(b) and (c) of the Board's Rules and Regulations. The Respondent's answer fails to specifically deny or explain any of the allegations in the compliance specification. Although the Respondent contended that it lacked sufficient information, the provisions of the collective-bargaining agreement with the Union, the repayment agreement with the Benefits Funds, the payroll records of unit employees, and the amounts remitted to the Benefit Funds are clearly within the Re-

spondent's knowledge. In view of the Respondent's failure to state the specific basis for its disagreement with the compliance specification's allegations and to set forth in detail, with supporting figures, any alternatives to those allegations, we accept all allegations in the compliance specification as true. Accordingly, we grant the General Counsel's Motion for Summary Judgment. We conclude that the amount of benefit fund contributions due is as stated in the compliance specification, and we shall order the Respondent pay this amount, subject to the appropriate credit for payments already made.³

³The compliance specification requests that the amount due include "interest computed . . . in accordance with current Board policy." Because the provisions of employee benefit fund agreements are variable and complex, we leave to further compliance proceedings the question of whether the Respondent must pay any additional

ORDER

The National Labor Relations Board orders that the Respondent, Sac's Construction Company, Inc. d/b/a Sac's Construction Co., Inc., Westboro, Massachusetts, its officers, agents, successors, and assigns, shall pay into the contractual fringe benefit funds the amounts stated in the compliance specification, subject to appropriate credit for payments already made.

amounts into the benefit funds to satisfy our make-whole remedy. These additional amounts may be determined, depending on the circumstances of each case, by reference to the provisions in the documents governing the funds at issue and, when there are no governing provisions, to evidence of any loss directly attributed to the unlawful withholding, which might include the loss of return on investment of the portion of funds withheld, additional administrative costs, etc., but not collateral losses. See *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).